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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI S.R. NAYAK, C.J.**
HON'BLE SHRI D.R. DESHMUKH, J.

W.P. NO.1417 OF 2006

PETITIONER

Balvinder Singh Rajput, son of Shri Sohan Singh Rajput, Aged 58 years, resident of 523, Priyadarshini Nagar, Raipur.

Versus

RESPONDENTS

1. Union of India, through the Secretary, Ministry of Law and Legislative Affairs, New Delhi.
2. The Bar Council of India, through its Chairman, New Delhi.
3. The State Bar Council of Chhattisgarh, through the Chairman, High Court Campus, Bilaspur.
4. The Registrar, Co-operative Societies Chhattisgarh, Raipur.
5. The Deputy Registrar, Co-operative Societies Chhattisgarh, Raipur.
6. Priyadarshini Grih Nirmaan Sahkari Samiti, Raipur, through its President Shri Rajesh Shrivastava, resident of 445, Priyadarshini Nagar, Raipur.

Present : Shri B.P. Sharma, learned counsel for the petitioner.
Shri S.K. Beriwal, learned Central Government Standing Counsel for respondent No.1/Union of India.
Shri Bhishma Kinger, learned counsel for respondent No.6.

(ORAL ORDER)
(Passed on 22nd March, 2006)

The following order of the Court was passed by

S.R. Nayak, CJ.

The Petitioner is a litigant in a dispute which has arisen under the provisions of Chhattisgarh Cooperative Societies Act 1960 (for short 'the Act'). Sub-Section (2) of Section 67of the Act mandates that no party shall be represented at the hearing of a dispute by any legal practitioner, except with the permission of the Registrar or his nominee or board of nominees, as the case may be. Since, it is not permissible for a party to be represented by a legal practitioner in view of sub-Section (2) of Section 67 of the Act without the prior permission of the Registrar, it appears that the petitioner herein made an application to the Deputy Registrar, Cooperative Societies, Raipur, who is in terms of the definition of the term 'Registrar' is the Registrar, seeking permission to be represented by a counsel. That request of the petitioner was turned-down by the Deputy Registrar by order dated 05.12.2005. The petitioner being aggrieved by the said order preferred a revision bearing Revision Case No. 78 (1) 56/2005 to the Registrar of Cooperative societies, Raipur. The Registrar of Cooperative societies also by his order dated 22.02.2006 dismissed the revision thereby affirming the order of the Deputy Registrar, Cooperative Societies, Raipur.

(2) The petitioner, therefore, has preferred this writ petition not only to set aside the orders made by the Deputy Registrar and the Registrar of the Cooperative Societies, Raipur, but also for certain other reliefs. In para 7 of the writ petition, the following reliefs are sought:-

> **"7. Relief Sought:**
> In view of the facts and grounds mentioned in the Paras 5 & 6 of the petition, the petitioner prays for following relief:-
> a. A writ and / or an order in the nature of writ of mandamus do issue directing the respondent authorities to produce before this Hon'ble Court all the

records pertaining to the case of the petitioner for its kind perusal.

b. A writ and / or an order in the nature of writ of mandamus do issue to the respondent No. 1 to exercise the discretion of issuing notification only way or another to bring into force Section 30 of the Advocates Act, 1961 having regard to the fact that almost half century has elapsed from the date on which the Act received the assent of the Hon'ble President of India.

c. A writ and / or an order in the nature of writ of certiorari do issue quashing the order dated 5-12-2005 passed in Case No. 64-23/2005 and its confirmation by the Registrar, Co-operative Societies, Raipur in revision petition No. 78(1) 56/05 dated 22-2-2006 (Annexure P-1 & P-2).

d. Cost of the petition may also be granted.

e. Any other relief, which this Hon'ble court may deem fit, in the facts and circumstances of the case."

(3) We have heard Shri B.P. Sharma, learned counsel for the petitioner, Shri S.K. Beriwal, learned Central Government Standing Counsel for Respondent No. 1 / Union of India and Shri Bhishma Kinger, learned Counsel for respondent No. 6.

(4) Shri B.P. Sharma with his usual vehemence and persuasion placing strong reliance on the direction issued by the Apex Court in the case of **Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India and others** [1] would contend that notwithstanding the gap of 49 years, the Government of India has not brought the Section 30 of the Advocates Act, 1961 into force and there was absolutely no justification for the Government of India not to bring Section 30 of the Advocates Act and

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1. (1988) 4 SCC-54

consequently the litigant public as well as the community of the Advocates suffer a lot. Learned counsel would highlight on that inaction on the part of the Government of India notwithstanding the direction issued by the Apex Court in the case of **Aeltemesh Rein (supra [1])**. On merits of the matter, Shri B.P. Sharma would contend that having regard to the facts and circumstance of the case which is pending before the Deputy Registrar, Cooperative Societies, Raipur for adjudication, the Deputy Registrar, Cooperative Societies, Raipur ought to have permitted the petitioner to engage the services of a counsel to prosecute his case as provided under sub-Section (2) of Section 67of the Act. Shri Sharma would submit that if the petitioner is not permitted to engage the services of a counsel it would result in prejudice to his client, because, the representative of the 6th respondent, namely, the President of the Cooperative Society who would prosecute the case on behalf of the 6th respondent-Cooperative Society is quite well-versed in cooperative laws and has been conducting the cases and that it would be unequal fight between the parties. In sum and substance, what Mr. Sharma would submit is that the Deputy Registrar of the Cooperative Societies as well as the Registrar of the Cooperative Societies, Raipur did not exercise the discretion vested in them under sub-Section (2) of Section 67 of the Act judiciously and fairly. On the other hand, learned counsel for Union of India and the 6th respondent would support the impugned orders.

(5) Having heard learned counsel for the parties, we do not find any merit in this writ petition. At the threshold, it needs to be noticed that sub-Section (3) Section 1 of the Advocates Act, 1961 provides that the Act shall, in relation to the territories other than those referred to in sub-Section (4) come into force on such date as the Central Government may,

by notification in the Official Gazette, appoint in that behalf; and different dates may be appointed for different provisions of the Act. Thus, it is quite clear that subject to the provisions of sub-Section (4) of Section 1 of the Advocates Act, it is the power of the Central Government to bring into force various provisions of the Act by issuing notification envisaged under sub-Section (3) in the Official Gazette. The power conferred on the Central Government is a discretionary power with regard to choosing a date for enforcement of various provisions of the Act. The question whether a writ could lie to the Central Government to exercise that discretion in a particular way and at a particular point of time and place is no longer *res integra* in view of the Judgment of the Constitution Bench of the Apex Court in **A.K. Roy Vs. Union of India**[2]. Furthermore, in the case of **Aeltemesh Rein (supra**[1]**)**, a request similar to the one made in this writ petition was made before the Apex Court to issue a direction to the Central Government to bring Section 30 of the Advocates Act into force. The Supreme Court placing reliance on the Judgment of the Constitution Bench in the case of **A.K. Roy** (Supra[2]) held that such a direction could not be issued to the Central Government. Having so opined, the Supreme Court, however, in para-6 of the judgment was pleased to observe thus:-

> "But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several

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2. (1982) 1 SCC 271 = AIR 1982 SC 710

conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [*sic* Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above."

(6) At this stage itself, it needs to be noticed that even such limited direction was issued to the Central Government, because, learned Attorney General of India who appeared in that case did not dispute the power of the Apex Court to issue such a limited direction, as observed by the Apex Court in para-6 itself. It is quite curious that the petitioner herein notwithstanding such direction issued by the Apex Court wants us to issue similar direction to the Central Government. This Court should not issue unnecessary writs, particularly, where the writ sought is already issued by the Apex Court for consideration of the Central Government. It is, however, submitted by Shri B.P. Sharma, learned counsel for the

petitioner that the writ issued by the Apex Court in the case of **Aeltemesh Rein (supra[1])** is not yet complied by the Central Government. We doubt very much. Be that as it may, if that is the case, this fact may be brought to the notice of the Hon'ble Apex Court itself and it is for the Hon'ble Apex Court to take appropriate action for the disobedience of the writ on the part of the Central Government.

(7) Therefore, the relief sought in clauses (a) and (b) of para-7 cannot be granted to the petitioner for the reasons stated supra. In addition, it needs to be noticed that since constitutional validity of the provisions of sub-section (3) of Section 1 of the Act is not questioned in this writ petition, if the writs sought in clauses (a) and (b) are granted, it would violate the law contained in sub-section (3) of Section 1 of the Act. Such a course is impermissible.

(8) This takes us to the next contention of the learned counsel for the petitioner, i.e., that the Deputy Registrar and Registrar of the Cooperative Societies, Raipur ought to have granted permission to the petitioner to engage the services of a counsel to prosecute his case by exercising discretion in his favour under sub-section (2) of Section 67 of the Act. We have perused the application made by the petitioner, opposition raised by the 6th respondent -Cooperative Society and the orders made by the Deputy Registrar and the Registrar of the Cooperative Societies, Raipur. The petitioner sought permission of the Deputy Registrar to engage the services of a counsel mainly on the ground that he is not conversant with the law and he quite often moves out of Raipur City for his business purposes. When that is the factual matrix laid in the application filed before the statutory authorities, quite curiously, in the

course of the arguments, Shri B.P. Sharma would submit that if the petitioner is not permitted to engage the services of a counsel, it would be an unequal fight, because, the President of the Cooperative Society who is going to conduct the case on behalf of the Cooperative Society is well-versed in law and in a way on par with any legal professional. Such a plea was not taken at all in the application. In fairness, we should say that the President of the Cooperative Society submitted before the Deputy Registrar, Cooperative Societies, Raipur that if for any reason the petitioner is permitted to engage the services of a counsel, the Cooperative Society also be permitted to engage the services of a counsel to prosecute their case. We think that that was a fair submission. It is not that the Deputy Registrar, Cooperative Societies, Raipur permitted the Cooperative Society to engage a counsel while denying such facility to the petitioner. The discretion exercised by the Deputy Registrar as well as the Registrar, Cooperative Societies in rejecting the request of the petitioner could not be faulted with. The discretion exercised by the statutory authorities, as held and reiterated by the Courts, should not lightly be interfered with by the Courts. Looking from any angle, we do not find any merit in this writ petition. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

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D.R. Deshmukh
Judge

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